



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/560,762	07/20/2006	Andre Lambert	1022702-000299	5135
21839 7590 11/27/2009 BUCHANAN, INGERSOLL & ROONEY PC POST OFFICE BOX 1404 ALEXANDRIA, VA 22313-1404				
EXAMINER				
CHIRISS, JENNIFER A				
ART UNIT		PAPER NUMBER		
1794				
NOTIFICATION DATE		DELIVERY MODE		
11/27/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

Office Action Summary

Application No.

10/560,762

Applicant(s)

LAMBERT ET AL.

Examiner

JENNIFER A. CHRISS

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24 - 27, 30 - 34, 37, 39 - 44 and 45 is/are pending in the application.
- 4a) Of the above claim(s) 40-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24 - 27, 30 - 34, 37, 39, 44 and 45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The Applicant's Amendments and Accompanying Remarks, filed July 20, 2009, have been entered and have been carefully considered. Claims 24, 25 and 41 are amended, claims 40 - 43 are withdrawn, claim 38 is cancelled and claims 24 - 27, 30 - 34, 37, 39 - 44 and 45 are pending. In view of the amendment to claim 25, the Examiner withdraws the 35 USC 112, second paragraph rejection as detailed in paragraphs 4 - 5 of the previous Office Action. In view of Applicant's argument that the combination of the prior art fails to teach and suggest every claimed element, specifically that the flame retardant has a pore volume of at least 0.5 ml/g, the Examiner withdraws all the previously set forth rejections as detailed in paragraphs 6 - 7 of the Office Action dated February 20, 2009. The invention as currently claimed is not found to be patentable for reasons herein below.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Specification

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

- a. Regarding claim 30, the Specification discusses a mean diameter of greater than 60 microns but does not discuss a mean diameter equal to 60

microns. The Examiner suggests amending the Specification to include this limitation as the originally filed claims provide support for a mean diameter equal to 60 microns.

b. Regarding claim 39, the Specification discusses additives such as pigments, heat stabilizers and mattifying agents, however, it does not discuss dyes, hydrophilic agent and hydrophobic agents. These limitations do have support in the originally filed claims and the Examiner suggest that the Applicant amend the Specification to include these limitations.

Claim Objections

4. Claim 32 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The Examiner recommends removing "and a pore volume of at least 0.5 ml/g, measured by the mercury porosity method" from claim 32 as it is required by claim 24 from which claim 32 depends.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 37 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
7. Claim 37 recites the limitation "the polyethylene terephthalate" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Allowable Subject Matter

8. The following is a statement of reasons for the indication of allowable subject matter: The closest prior art, Atarashi et al. (US 6,025,421), teaches an inorganic filler surface-treated with a phosphate and an aromatic orthophosphate which is incorporated into a thermoplastic resin, however, Atarashi et al. fail to teach or suggest that the inorganic filler exhibits a pore volume of at least 0.5 ml/g which is a level of high porosity which allows the flame retardant compound to be absorbed into the filler. An updated art search did not produce any new substantial art for which to base a rejection and presently no motivation exists to combine references to render the claimed invention obvious. As such, claims 24 – 27, 31, 33 – 34 and 44 – 45 are found allowable over the prior art of record.
9. Claim 32 would be allowable if rewritten to overcome the claim objection as set forth above.
10. Claim 37 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth above.

Additional Comments

11. Regarding any potential rejoinder of the process claims 40 – 43, the Examiner submits that a Terminal Disclaimer may be required to disclaim the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of US 7,482,400 (see claims 7 – 14).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNIFER A. CHRISS whose telephone number is (571)272-7783. The examiner can normally be reached on Monday - Friday, 8:30 a.m. - 6 p.m., first Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Tarazano can be reached on 571-272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jennifer A Chriss/
Primary Examiner, Art Unit 1794

/J. A. C./
Primary Examiner, Art Unit 1794